

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 902 of 1997

to

FIRST APPEAL No 906 of 1997

with

Civil Application No. 2979 of 1997

to

Civil Application No. 2983 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GSRTC

Versus

JETUNBEN MOHMADBHAI

Appearance:

MR KS JHAVERI for appellant.

MR SHAKEEL A QURESHI for Respondent No. 1, 2, 3, 4, 5, 6, 7

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.M.KAPADIA

Date of decision: 12/03/98

COMMON ORAL JUDGEMENT (Per A.M.Kapadia, J.)

This common judgment shall govern the disposal of these

five appeals arising out of the common judgment and award dated 30.9.1996 passed by the Motor Accident Claims Tribunal (Main), Bhavnagar, in Motor Accident Claim Petitions No. 46/95, 47/95, 50/95, 51/95 and 52/95 whereby the Tribunal has awarded the amount of compensation to the heirs and legal representatives of the deceased persons and to the victims who have suffered personal injuries in the road accident. Details about the claim petitions, amount claimed, compensation awarded, etc., are as under:

Sr. MACP F.A. Amount Amount
No. No. No. claimed awarded

1.	46/95	902/97	Rs.5,00,000	Rs.3,08,000
2.	47/95	903/97	Rs.5,00,000	Rs.3,08,000
3.	50/95	904/97	Rs.1,25,000	Rs. 55,000
4.	51/95	905/97	Rs.1,25,000	Rs. 90,000
5.	52/95	906/97	Rs.1,00,000	Rs. 55,000

It is the case of the claimants that on the relevant date and time, the injured claimants and the deceased persons boarded the auto rickshaw No. GTS 9566 and they were proceeding on Bhavnagar-Rajkot Highway. The said auto rickshaw was plied by its driver on the correct side of the road and at a moderate speed. When the said rickshaw reached near the place of the occurrence, S.T. Bus bearing No.GJ-1-Z-3275 came from the opposite direction and dashed against the auto rickshaw which has resulted into the accident giving rise to the above-mentioned claim petitions. In the accident, Mahmadbhai, the driver of the auto rickshaw and one Yunusbhai, who was occupying a seat in the said auto rickshaw, succumbed to the injuries sustained by them and three other passengers including a minor, sustained severe bodily injuries. Therefore, heirs and legal representatives of the deceased Mohmedbhai and Yunusbhai filed claim petitions being MACP Nos. 46/95 and 47/95 respectively, claiming dependency benefits and other injured persons filed MACP Nos.50/95, 51/95 and 52/95, claiming compensation for the bodily injuries sustained by them. All the claim petitions were filed against the S.T. Corporation and its driver.

The S.T. Corporation contested the claim petitions by filing separate written statements raising identical and similar contentions therein. It was, inter alia, contended that all the claim petitions are false and not tenable at law and averments and allegations of the claimants with regard to the age of the deceased persons, income, nature of work, cause of death and factum of

alleged occurrence, mental pain, shock and sufferings undergone, loss of income, incidental expenses incurred by them on various grounds, dependency benefits, relations with the deceased persons, are denied and are not admitted. Similarly, the allegations of the injured claimants with regard to their age, income, nature of work, injuries, fractures, disablement caused, period of treatment, hospitalisation, mental pain, shock and sufferings undergone, incidental expenses incurred on various counts, loss of past and future income, all are denied and not admitted by the S.T. Corporation.

So far as the accident was concerned, it was denied by the S.T. Corporation that the accident was caused because of the rash and negligent act of the driver of the S.T. bus and it was contended that the rickshaw driver himself was solely responsible for causing the accident. Ultimately it was prayed that all the claim petitions are exaggerated and inflated and excessive amounts of compensation are claimed and, therefore, the claim petitions be dismissed with costs.

The learned Tribunal consolidated all the claim petitions and after considering the evidence produced and adduced before it, came to the conclusion that the accident was the result of sole rash and negligent act on the part of the driver of the S.T. bus and no negligence can be attributed to the auto rickshaw driver and, therefore, passed award against the S.T. Corporation, as mentioned herein above, considering the dependency benefits of the claim cases preferred by the heirs of both the deceased persons and the injuries sustained by the injured applicants.

The legality and validity of the judgment and award passed in all the above mentioned claim petitions are now in the anvil before us.

We have heard the learned advocate Mr. Zaveri for the appellant/ S.T. Corporation and Mr. Shakeel Qureshi for the respondents/ original claimants. The pith and substance of their submissions centres around the determination of the amount of compensation by the Tribunal. According to Mr. Zaveri, the Tribunal has awarded excessive amount without any evidence brought on record. Practically, there is no evidence with regard to the claims in respect of both the deceased persons are concerned. He further submitted that so far as other three injured claimants are concerned, the amount awarded by the Tribunal is on higher side. Therefore, the amount awarded as compensation is required to be reduced to a

reasonable extent and just and reasonable compensation may be awarded.

As against this, Mr. Qureshi has supported the judgment and award passed by the Tribunal. According to him, the award which the Tribunal has passed in favour of the claimants, is just, reasonable, moderate and cannot be said to be excessive and, therefore, the appeals deserve to be dismissed by confirming the judgment and award passed by the Tribunal.

We have given our anxious thought to the rival contentions raised by the learned advocates for the parties. We have also gone through the copies of the evidence produced by the learned advocates for the parties during the course of arguments before us. On having a look at it, it could be made out that there is no dispute with respect to the happening of the unfortunate event which claimed lives of two persons including the auto rickshaw driver and caused injuries to three passengers, including a minor. There is ample evidence that the S.T. bus dashed against the auto rickshaw and there was head on collision which has also come in evidence. FIR was lodged against the S.T. driver, prosecution was launched against him and the Tribunal has come to the conclusion that at the relevant time the S.T. bus driver was rash and negligent and no negligence can be attributed to the auto rickshaw driver. After perusing the evidence, we are fully satisfied that the learned Tribunal has come to the just and correct conclusion so far as the contribution of the sole negligence to the S.T. bus driver is concerned.

Now this takes us to the determination of the compensation awarded in each claim case by the Tribunal and for that we have to examine whether the Tribunal has awarded just and reasonable compensation or whether the Tribunal has awarded compensation which can be termed excessive or unreasonable.

So far as MACP No.46/95 out of which the First Appeal No. 902 of 1997 is taken out is concerned, the said claim petition was filed by the heirs and legal representatives of the deceased Mahmedbhai, the auto rickshaw driver, who was actually driving the auto rickshaw at the relevant time and, therefore, it cannot be doubted that he was plying the auto rickshaw. The deceased himself was engaged in the work of plying auto rickshaw. Now we have to determine as to what should be the income of the auto rickshaw driver. It may be appreciated that so far as evidence in this regard is concerned, it consists oral

evidence of the widow of the deceased and no other documentary evidence corroborating the oral evidence as to the income has come before the Tribunal. In the absence of any evidence the Tribunal considered the dependency value at Rs.2000/- per month and considering the age of the deceased, applied 12 years purchase factor and ultimately awarded an amount of Rs.2,88,000/- under the head of dependency benefit and to that added an amount of Rs.20,000 under the head of loss of expectation of life and in all awarded an amount of Rs.3,08,000/which according to us is a little on higher side. In the absence of any documentary evidence the Tribunal ought not to have considered the dependency value at Rs.2000 per month. It is a settled proposition of law that conjectures, surmises and guess work to certain extent is permissible in order to find out the correct income of the deceased. It is true that the deceased was engaged in plying auto rickshaw. Therefore, heirs and legal representatives of the deceased must be compensated adequately. As we observed earlier, so far as the income of the deceased is concerned, the conclusion arrived at by the Tribunal is on higher side and, therefore, we propose to award Rs.2,50,000/- in lump-sum instead of Rs.3,08,000 as awarded by the Tribunal and to that extent the award passed by the Tribunal is required to be modified. Under the circumstances, we award Rs.2,50,000/- by way of compensation in lump-sum with proportionate cost and interest. Therefore, FA No. 902 of 1995 is partly allowed and the judgment and award passed in MACP No. 46/95 is modified to the extent as indicated above. Under the circumstances, the claimants are entitled to receive compensation of Rs.2,50,000/instead of Rs.3,08,000/-.

MACP No. 47/95 out of which FA No. 903/97 has arisen was filed by the heirs and legal representatives of the deceased Yunusbhai, who was engaged in selling meat and at the relevant time he was aged 23 years. In this case also the Tribunal awarded an amount of RS.3,08,000 to the claimants as compensation. In this case, we are of the opinion that looking to the age of the deceased who was about 23 at the relevant time and the family consisting of two minor children and parents and a widow, we propose to award Rs.2,75,000/- in lump-sum instead of Rs.3,08,000/as awarded by the Tribunal. Under the circumstances, we award Rs.2,75,000/- by way of compensation with proportionate cost and interest to the claimants of MACP No. 47/95. Therefore, FA No. 903 of 1995 is partly allowed and the judgment and award passed in MACP No. 47/95 stands modified to the extent as indicated above. In the circumstances, the claimants are

entitled to receive compensation of Rs.2,75,000/- instead of Rs.3,08,000/-.

MACP No. 50 of 1995 from which FA No. 904/97 has arisen was filed by the injured Firozbhai who received fracture of femur. He was operated upon his two legs and rod was inserted which was required to be removed and as a result of the fracture injury he received disablement to the extent of 10%. In this case the Tribunal awarded an amount of Rs.55,000. Looking to the injuries it is clear that the injuries were on a very vital part of the body which can definitely be called very serious in nature, and hence we propose to award Rs.50,000/- in all instead of Rs.55,000/- as awarded by the Tribunal. Hence FA No. 904 of 1997 is partly allowed and the judgment and award passed in MACP No. 50 of 1995 stands modified to the extent as indicated above. In the circumstances, the claimant is entitled to receive compensation of Rs.50,000/- instead of Rs.55,000/-.

In MACP No. 51/95 from which FA No. 905 of 1997 has arisen, the injured Alibhai has received fracture of tibia and fibula and as a result of the same he has become disabled to the extent of 18% to 20%. Plate was inserted on his left leg which is required to be removed. Thereafter bone grafting was also to be done and he incurred huge expenditure for treatment. He was bedridden for a pretty long period. During this time he incurred loss of daily income. In this case the Tribunal awarded Rs.90,000 by way of compensation. In this case also we propose to reduce the amount of compensation by Rs.15,000 and thus instead of Rs.90,000 the claimant is entitled to receive Rs.75,000 in all. Hence, FA No. 905 of 1997 is partly allowed and the judgment and award passed in MACP No. 51 of 1995 stands modified to the extent as indicated above.

In MACP No. 52/95 from which FA No. 906 of 1997 has arisen, the injured Gulamahmed sustained fracture of hip on the left leg. Rod was inserted on that part which and the same is required to be removed. He spent heavy expenditure for treatment and incidental expenses. He had also incurred loss of daily earnings. In this case the Tribunal awarded Rs.55,000 by way of compensation. In this case also the awarded amount being on a little higher side, we propose to reduce the same by Rs.5000 and thus the claimant is entitled to Rs.50,000 in all instead of Rs.55,000 as awarded by the Tribunal. Hence, FA No. 906 of 1997 is partly allowed and the judgment and award passed in MACP No. 52 of 1995 stands modified to the extent as indicated above.

In the net result, all the appeals succeed in part and accordingly they are partly allowed to the extent as mentioned above. In the premise, the claimants are now entitled to recover the amount of compensation as under:

Sr.	MACP FA	Amount awarded	Amount to which
No.	No.	No.	by Tribunal now entitled
		Rs.	Rs.

1.	46/95	902/97	3,08,000	2,50,000
2.	47/95	903/97	3,08,000	2,75,000
3.	50/95	904/97	55,000	50,000
4.	51/95	905/97	90,000	75,000
5.	52/95	906/97	55,000	50,000

It is clarified that the claimants are entitled to proportionate costs and interest on the aforesaid amount. The award passed by the Tribunal is modified to the aforesaid extent.

If the appellant S.T. Corporation has deposited Rs.25,000/- in each appeal before this Court, the said amounts shall be transmitted to the concerned Tribunal forthwith. On the amount being deposited by the ST Corporation in the Tribunal, as per the modified award, it shall be open for the Tribunal to pass necessary orders for apportionment, disbursement, investment and deficit court fees, if any.

Accordingly the above five appeals are partly allowed. There shall be no order as to costs.

No order on civil applications.